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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/534,433

Filing Date: March 23, 2000

Appellant(s): PATTON, DAVID L.

Thomas J. Strouse
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

This is in response to the appeal brief filed September 21, 2006 appealing from the Office action mailed June 9, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application 10/762,668

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes to the grounds of rejection are as follows:

Whether claims 12,14,19-21,23,30-32 and 34 are anticipated under 35 U.S.C. 102(b) over Guttag (5,120,089), or in the alternative, unpatentable under 35 U.S.C.

103(a) over Guttag in view of Denenberg (5,673,338) and further in view of Schlauch (6,082,774).

Whether claims 18,22,29 and 33 are unpatentable under 35 U.S.C. 103(a) over Guttag in view of Denenberg and Schlauch and further in view of Martin (5,601,683) or Burnham (4,884,828).

Note: In the appeal brief (9-21-2006), appellant omitted the rejections of claims 18,22,29,33 under 35 U.S.C. 103(a) as unpatentable over Guttag in view of Denenberg and Schlauch and further in view of Martin or Burnham and grouped all pending claims under a single rejection under 35 U.S.C. 102(b) over Guttag or in the alternative under 35 U.S.C. 103(a) over Guttag in view of Denenberg and further in view of Schlauch.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,120,089	GUTTAG	06-1992
5,673,338	DENENBERG et al	09-1997
6,082,774	SCHLAUCH	07-2000
5,601,683	MARTIN	02-1997
4,884,828	BURNHAM et al	12-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Whether claims 12,14,19-21,23,30-32 and 34 are anticipated under 35 U.S.C. 102(b) over Guttag (5,120,089), or in the alternative, unpatentable under 35

U.S.C. 103(a) over Guttag in view of Denenberg (5,673,338) and further in view of Schlauch (6,082,774).

2. Whether claims 18,22,29 and 33 are unpatentable under 35 U.S.C. 103(a) over Guttag in view of Denenberg and Schlauch and further in view of Martin (5,601,683) or Burnham (4,884,828).

(10) Response to Argument

In response to appellant's argument that the Guttag reference "fails to teach or suggest at least a second indicia which is not visible under normal viewing conditions for confirming that said limited edition official stamp is a valid limited edition official postal stamp", the examiner submits that Guttag does indeed disclose a philatelic item being an official postage stamp (see Col. 1, lines 10-42, as well as Col. 2, line 45) having a first visible indicia and an inherent "second indicia". For this inherency teaching, appellant is respectfully requested to review the teachings of Denenberg, which teaches a postage stamp (see Claim 9) having unique indicia (see Col. 3, lines 10-26) which is not capable of being reproduced (see Col. 3, lines 55-59; also Col. 5, lines 37-55; Col. 1, lines 28-35; and Col. 3, lines 23-26). Simple microscopic (not visible under normal viewing conditions) irregularities in the ink, bubbles in the ink and/or fibers of the paper, at least one of which is inherent in the stamp of Guttag, each defines an "indicia" not capable of being scanned for reproduction. In as much set forth by appellant in the claim, this "second indicia", inherently in Guttag, meets the claimed limitations (see MPEP 2111). Further in line with the teachings of Denenberg, the Guttag stamp inherently includes indicia which is consistent with the printer from which

it was printed. It is very well known that printers are each unique and contain "flaws" or "imperfections" unique to each printer wherein the print acts as a pseudo fingerprint. This fingerprint is analogous to that of a firearm. When a bullet is fired, a unique pattern is provided on the bullet, which identifies a single firearm. In as much set forth as to the type/structure of the indicia in the claim, such "fingerprints" are inherent to the printer, which forms the stamp defining the third indicia. In regards to wherein the second indicia for confirming that the limited edition official postal stamp is a valid limited edition official postal stamp, the examiner submits that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. Therefore the second indicia of Guttag can be used for confirming whether the stamp is valid.

In response to appellant's argument that the Schlauch reference "fails to teach or suggest at least a second indicia which is not visible under normal viewing conditions for confirming that said limited edition official stamp is a valid limited edition official stamp", the examiner submits that the Schlauch reference is only used for disclosing an alternative device having a first indicia means (not used for second indicia) to identify memorabilia and collector items (see abstract). Attention is directed to Fig. 5A of the Schlauch reference, which discloses another philatelic item (see Col. 10, lines 17+) having clearly marked thereon a unique ID first indicia that indicates one of a

predetermined number (see lead line 520 in Fig. 5A) which clearly indicates a limited edition. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide limited edition indicia on the stamp of Guttag as, for example, illustrated in the Schlauch reference, so as to increase the value of the philatelic item and to assure the collector as to the overall numbers of the item. As to the second indicia of the Guttag device as discussed above, in the alternative, attention is again directed to the teachings of Denenberg, which teaches the well known concept of applying microdots to an article for authentication (see Col. 1, lines 28+, and Col. 2, lines 43+). It also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide microdots, or, for that matter, any authentication indicia that prevents fraud, on the Guttag stamp, for example, as discussed in the teachings of Denenberg which is to be used on postage stamps to prevent fraud and assure authenticity to a collector. Therefore, the examiner has maintained the final rejection.

Regarding appellant's comments towards Martin and Burnham, the examiner maintains that these references are being applied merely for the teaching of ultra-violet inks. These references in combination with the teachings of Guttag, Denenberg and Schlauch meet the claim limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jamila Williams

/J. W./

Examiner, Art Unit 3725

Conferees:

Derris Banks

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Supervisory Patent Examiner, Art Unit 3725

Marc Jimenez

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TQAS TC 3700